

Supreme Court, U.S.
FILED

081038 DEC 11 2008

No. OFFICE OF THE CLERK

**IN THE
SUPREME COURT OF THE UNITED STATES**

Richard Snyder

Petitioner

v.

**Carolyn Swanson, Personal Representative
Of: Estate of George L. Swanson; Carolyn
Swanson; Robert Swanson**

Respondents

**On Petition for Writ of Certiorari to the
Court of Appeals of Maryland**

PETITION FOR WRIT OF CERTIORARI

**Richard Snyder, *pro se*
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(i)

QUESTIONS PRESENTED FOR REVIEW

In a State court civil action, plaintiff, while awaiting a scheduling order, had his complaint dismissed *sua sponte* for "lack of jurisdiction" and "with prejudice." The order was not accompanied by any reasons as to why there was a "lack of jurisdiction". Nor why it should be dismissed "with prejudice."

The Question Presented is: Is the state court order a final and appealable order?

(1)

RULE 29.6

No parent or publicly-held company is involved.

The Maryland Courts of Appeal affirmed
the Circuit Court for Prince George's County.

The order was not final. (Appendix)

Jurisdiction is invoked under 28 U.S.C. 1254 (1)

Sought for review dates: 20 March 2007 (Circuit Court)

Appeals: 10 July 2008; 12 September 2008

STATEMENT OF THE CASE: IS THE ORDER FINAL?

1. If "yes" (Collateral Order Doctrine) it must be remanded.
2. A failed contract case is pending. There has been no discovery, nor are any other court orders in effect.
3. The state court, *sua sponte*, dismissed plaintiff's complaint for "lack of jurisdiction (and) with prejudice".
4. Both State appeals courts said the order was not final.

REASONS FOR GRANTING THE PETITION

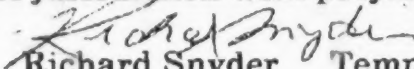
1. Many orders of dismissal are issued "without prejudice". Such would allow the complainant to re-file or withdraw.
2. Petitioner had neither committed a violation of state law nor failed to respond to court orders. But his complaint dismissed "with prejudice" on lack of jurisdiction.
3. Some Maryland State cases suggest that such an order *is* final and appealable: Wilde v. Swanson (314 Md. 80) "Dismissal...for lack of jurisdiction is a final judgment because plaintiffs were deprived of means of further prosecuting their claim.." Also: Doehring v. Wagner 311 Md. 272. "The Circuit Court order was a final judgment, as the order put the plaintiffs out of court". Walbert v. Walbert (310 Md. 657): "The Circuit Court's unqualified order was a final judgment because it put (plaintiff) out of court, denying her a means of further prosecuting the case at trial level" (Cited in Ferrell v. Benson (118 Md Court of Appeals) (19 Nov. 1998).

(2)

4. The matter of dismissals is examined in Moya v. Schollenbarger (04-2319)(10th Circuit) (26 Sept. 2006). The opinion discusses the collateral order doctrine. It gives a "practical" analysis and its' legislative history: "Dismissal with prejudice is final and appealable. It means that the entire action is dismissed, or the complaint is dismissed, without leave to amend." Ciralsky v. C.I.A. (355 F. 3d 661): "Dismissal with prejudice of .. an action or complaint ..is final and appealable." Heffernan v. Hunter(189 F. 3d. 405): "Dismissal with prejudice produces a final order..."
5. Collateral Order Doctrine is discussed in Collier On Bankruptcy (5.07)(3) (appealability and final orders) Early cases include Cohen v. Beneficial Loan Corp. (337 U.S. 541) and Forgay v. Conrad (45 U.S. 201).

Conclusion

1. There are various interpretations of the collateral order doctrine. They do not appear to be uniform within and without the various circuits.
2. The term "with prejudice" is particularly vexatious. Its' use has the effect of putting the plaintiff out of court without an opportunity for trial on the merits.
3. Petitioner has demonstrated that some circuits recognize such dismissal as final and appealable.
4. Petitioner asks for resolution of an important issue.
5. There are other ways of disposing of court calendars. "Lack of jurisdiction with prejudice" should not be one.



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APPENDIX

IN THE CIRCUIT COURT OF PRINCE GEORGE'S COUNTY MARYLAND

Richard Snyder
Plaintiff

CAL-02-24741

v.

Carolyn Swanson et al.
Defendants

Amended Order

Upon review of the case file the Court finds that U.S. C. 362(a) that provides for an automatic stay of proceedings upon the filing of bankruptcy is only applicable when a suit involves a claim against the debtor. In the present case the debtor is the party bringing the claim and thus no automatic stay is justified pursuant to U.S.C. 362 (a). However, defendants' counter claim, as an action against the debtor does warrant an automatic stay pursuant to the statute.

Accordingly, it is this 20th day of March 2007, by the Circuit Court for Prince George's County, Maryland, ordered that the complaint in the above captioned case be, and hereby is, dismissed with prejudice for lack of jurisdiction, and it is further Ordered, that the counter claim be and hereby is staid pursuant to U.S.C.362(a).

/s Graydon McKee III Chief Judge

APPENDIX(2)

THE MARYLAND COURT OF SPECIAL APPEALS

**Richard Snyder
Petitioner**

No. 0272 (2007)

v.

10 July 2008.

**Carolyn Swanson et al.
Respondents**

Order

For purposes of determining appellate jurisdiction we look to the ruling made by the Circuit Court. When doing so for purposes of finality, we intimate no opinion on the legal merits of the ruling. We simply comply with the longstanding bedrock rule of appellate jurisdiction, practice and procedure that unless otherwise provided by law, the right to seek appellate review in the Court of Appeals or the Court of Special Appeals ordinarily must wait until the entry of a final order that disposes of all claims against the parties.

No Signature

THE MARYLAND COURT OF APPEALS

**Richard Snyder
Petitioner**

**Docket 265/0072
Sept. Term 2008**

v.

**Carolyn Swanson, et al.
Respondents**

ORDER

Upon consideration of the petition for writ of certiorari to the Court of Special Appeals filed in the above captioned case, it is ordered by the Court of Appeals of Maryland that the petition be and is hereby denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s Robert Bell, Chief Judge 12 Sept. 2008